

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3647 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GANDEVI NAGAR PANCHAYAT

Versus

SHANTABEN NANJIBHAI

Appearance:

MR MI PATEL for Petitioner
MR YV SHAH for Respondent No. 1
SERVED for Respondent No. 4

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 24/12/96

ORAL JUDGEMENT

On 20th December 1996, this matter was heard.
Today, Mr. Patel has appeared before the Court and has made submissions, and, after hearing both the Advocates, I am disposing of this matter.

2. The petitioner, Gandevi Nagarpanchayat, is a body corporate constituted under the provisions of the Gujarat

Panchayats Act (hereinafter referred to as the Act), and performing duties and functions as prescribed under the provisions of the said Act. The case of the petitioner-Panchayat is that it used to employ workers as daily wagers, particularly in monsoon season; before the monsoon set in in the year 1981, respondents No. 1, 2 and 3 herein were employed as daily rated workers; and, respondents No. 1, 2 and 3 were never engaged as labourers in any previous year. It appears that the respondents No. 1, 2 and 3, acting through Union, made an application to the Labour Officer at Valsad to the effect that they are entitled to be treated as permanent employees of the Panchayat, and that they should be reinstated in service. It appears that after considering the material placed before the Labour Officer, a failure report was submitted to the State of Gujarat, and, ultimately, the matter was placed before the Labour Court at Surat. The Labour Court issued summons to the respondents No. 1, 2 and 3 on 25.1.1982, calling upon them to file their statements before 5th March 1982 and to serve a copy thereof to the Nagar Panchayat, and the Nagar Panchayat was also called upon to file their reply on or before 5th April 1982. Thereafter, it appears that the proceedings came to be transferred from Surat to Navsari and the petitioner herein was not informed about transfer of the proceedings, and no notice has been issued by the Court to which the matter stood transferred. It further appears that in the absence of such communication, the Panchayat was not represented, and an ex parte order came to be passed by the Labour Court. The Panchayat came to know about the same only when the Advocate for respondents No. 1, 2 and 3 communicated the decision of the Labour Court, on 23rd November 1984, vide annexure 'D'. The Panchayat made an application, being application No. 19/84, before the Labour Court at Navsari to set aside the ex parte award and to dispose of the matter on merits after hearing them. That application was filed on 26.12.1984. The Labour Court came to the conclusion that it cannot be said to be an ex parte order because before the Court at Surat, the Advocate was appearing and an application was submitted for time to file reply, which was granted. The Labour Court further held that the application was required to be made within a period of thirty days, and as per contentions raised in the application, the petitioner came to know about the order on 23.11.1984 and as the application is submitted only on 26.12.1984, the same is barred by limitation prescribed under the rules, and no application is submitted to condone delay. Thus, by order dated 15.11.1984, the Labour Court rejected the application to set aside the ex parte award.

Being aggrieved by the said order, the Panchayat has preferred this petition under Article 227 of the Constitution of India.

3. The petitioner has pointed out that the Labour Court has seriously erred in holding that the application was delayed by three days. It is pointed out in paragraph 7 of the petition that the period of thirty days expired on 22nd December 1984, but that being a fourth Saturday, the Labour Court was closed. 23rd December 1984 was a Sunday, and therefore, a holiday. 24th December 1984 was declared as a holiday on account of general elections. 25th December 1984, being Christmas day, was again a holiday. Hence the application was filed on the earliest available working day, i.e. 26th December 1984, and, therefore, the application is in time. The respondents have not controverted these facts by filing their reply. In view of what is stated in paragraph 7 of the petition, which we have enumerated above, it is clear that it cannot be said that the Panchayat has not submitted the application within time.

4. In the circumstances, this petition is required to be allowed, and is allowed. The impugned order passed by the Presiding Officer of the Labour Court at Annexure 'E' to the petition is quashed and set aside. The Labour Court is directed to dispose of the application submitted by the petitioner as early as possible.

Rule made absolute. No order as to costs.

csm./ *****